

AKLAND

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January 24, 2017

EPA
Freedom of Information Officer
999 18th Street, Suite 500
Denver, Co 80202-2466

via email: r8foia@epa.gov

RE: Freedom of Information Act Request

Dear Action Agency:

Pursuant to the Freedom of Information Act (FOIA), we request the following documents relating to ESA consultation between the Environmental Protection Agency and the U.S. Fish and Wildlife for bull trout and bull trout critical habitat in the Silver Bow Creek/Butte Area National Priorities List Site in the Upper Clark Fork Basin area in Montana from 1990 to Present.

1. Specifically, Alliance for the Wild Rockies requests any and all documents that are a result of ESA consultation between the EPA and U.S. Fish and Wildlife Service for bull trout and bull trout critical habitat for the following Operating Units:
 - a. Butte Mine Flooding/ Berkley Pit;
 - b. Warm Springs Pond (Active Operating Unit);
 - c. Warm Springs Pond (Inactive Operating Unit);
 - d. Rocker Timber Framing Treatment Plant;
 - e. Butte Priority Soils;
 - f. Streamside Tailing;
 - g. Reduction Work Tailings;
 - h. Travona Mine;
 - i. Clark Fork/Down Stream;
 - j. Butte Residential Soils; and
 - k. West Side Soils.

Alliance for the Wild Rockies ("Alliance") is a 501(c)(3) non-profit, public interest, public education organization.

To the requester's knowledge, this information is not available from any other federal, state or public agency required to provide it. In addition, the release of this information will not result in financial benefit to any individuals, groups or organizations.

The FOI Act provides that if portions of a document are exempt from release, the remainder must be segregated and disclosed. We expect to receive all non-exempt portions of the documents that we have requested and ask that you justify any deletions by reference to specific exemptions allowed under the FOI Act. Alliance reserves the right to appeal a decision to withhold any materials.

We hereby request a fee waiver for all search and duplication fees under the FOIA regulations [5 U.S.C. Sec. 552(a)(4)(A) and 36 CFR 2.19(c)(1)]. The information requested will benefit the citizens of the United States and is for the purpose of public education and to encourage public debate on the important policy issues. Alliance has no commercial interest in the documents requested. There is widespread public interest in bull trout and bull trout critical habitat throughout the northwest, specifically in the Clark Fork River. Disclosure of the requested documents, which are not generally available to the public elsewhere, will further enhance and enlighten the public's understanding of the issue.

Alliance has the ability and intention to disseminate the information we receive to the general public through: publication of the group's newsletter, website, news media and at public meetings and conferences. Information available through the group's office and newsletters are used in press conferences and releases, television and radio interview and regional and national publications and reach a significant number of individuals nation wide.

In addition to meeting the general standard for FOIA fee waiver requests, Alliance is also a representative of the new media. The group publishes newsletters, writes articles on this issue for other organizations, disseminates information through our website and gives public presentations at meetings and conferences.

The language of the FOIA clearly indicates Congress's intent that fees not be a barrier to private individuals seeking access to government records. In addition, the legislative history of the FOIA fee waiver language indicates that Congress intended a liberal interpretation of the phrase "Primarily benefiting the public." This suggests that all fees are to be waived whenever the release of information contributes to public debate on important policy issues. This has been affirmed by the US Court of Appeals for the District of Columbia in *Better Government Association v. Department of State*, 780 F. 2d 86 (D.C. Cir., 1986). In that case, the Court found that under the FOIA, Congress had explicitly recognized the need for non-profit organizations to have free access to government documents and that government agencies cannot impair this free access by charging duplication or search for FOIA information requests. *Id.* at 89.

We anticipate no delay in granting this fee waiver request. We prefer the requested records and documents be provided in common electronic formats whenever possible. As per the FOIA, we request and expect that you will respond within 20 working days.

Sincerely,

/s/

Kristine M. Akland,
Counsel for Alliance for the Wild Rockies

Alliance for the Wild Rockies
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